



December 12, 2007

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: Proposed Rules on Funding of Unlawful Internet Gambling  
Docket No. R-1298

Dear Ms. Johnson:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the proposed rules to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act"). By way of background, the California and Nevada Credit Union Leagues (the Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

***Background***

The Unlawful Internet Gambling Enforcement Act of 2006 was enacted on October 13, 2006 as Title VIII of the Security and Accountability For Every (SAFE) Port Act of 2006. The Act prohibits persons engaged in the business of betting or wagering from knowingly accepting payments from another engaged in unlawful Internet gambling. Among other provisions, the Act directed the Federal Reserve Board and Treasury Department (the Agencies) to implement its provisions, in consultation with the Department of Justice.

The Agencies have issued proposed rules which would require participants (including credit unions and other financial institutions) in "designated payment systems" to establish policies and procedures reasonably designed to identify and block or prevent transactions in connection with unlawful Internet gambling. Five payment systems have been designated in the proposal:

- Automated clearing house systems (ACH);
- Card systems (including credit, debit, and pre-paid cards or stored value products);
- Check collection systems;
- Money transmitting businesses; and
- Wire transfer systems.

The proposal exempts all participants in the ACH systems, check collection systems, and wire transfer systems, except participants that possess a customer relationship with an Internet gambling business. (Card systems were not exempted, since merchant category and transaction codes exist that can be used to block

transactions in real time.) However, no designated payment system is completely exempted from the proposed rule. Distilled down to its key provisions, and viewed from the perspective of credit unions and other financial institutions, the proposal requires participants who have a customer relationship with an Internet gambling business to implement policies and procedures to identify and block restricted transactions in the following situations:

- An institution serving as an originating depository financial institution (ODFI) in an ACH debit transaction;
- An institution serving as a receiving depository financial institution (RDFI) in an ACH credit transaction;
- An institution serving as a depository bank (i.e., the first U.S. institution to which a check is transferred, in this case the institution receiving the check deposit from the gambling business); and
- An institution serving as the beneficiary's bank in a wire transfer transaction (i.e., the institution receiving the wire transfer of behalf of the gambling business).

### ***The Leagues' Position***

The Leagues appreciate the generally thoughtful nature of the proposal, including the Agencies' attempt to address some of the technical and logistical limitations inherent in certain types of payment systems. For example, we recognize and approve of the Agencies' approach in seeking to determine which party in each payment system is in the best position to potentially detect and prevent unlawful Internet gambling activity. We understand the difficulty in balancing the requirements of the Act against the practicalities of "real-world" compliance, and applaud the Agencies' efforts in this area.

However, the current proposal falls substantially short in recognizing the complexity and operational burdens that implementation of the proposal would involve. We believe these shortcomings are significant enough to make the proposed rules unworkable—or, at the least, highly ineffective—in fulfilling the goal of the Act. We are also troubled that the proposal does not contain a complete assessment of the potential costs to credit unions, financial institutions, small businesses, and other payment system participants. Therefore, as we will discuss in more detail later, we respectfully recommend the Agencies extend the comment period another 90 days to allow the Agencies and other stakeholders to further evaluate alternative options and obtain more complete operational and cost information.

### ***Our Concerns***

Even though the proposal contains exemptions for several payment types based on a participant's role in a particular transaction, from a financial institution operational standpoint all compliance efforts would need to begin by determining which accounts are owned by Internet gambling businesses. This would involve a review of all

existing and newly opened accounts. Once Internet gambling businesses were identified, more detailed analysis would then be required in order to determine whether unlawful gaming activity is taking place on these accounts. It is this determination which is the source of our concerns.

The Agencies do not state which Internet gambling transactions are unlawful, instead referring participants to the underlying substantive State and Federal gambling laws. Further complicating matters is that some forms of gambling are excluded from the definition of “unlawful Internet gambling” in the Act (e.g., intrastate gambling, intratribal gambling, and interstate horseracing transactions). As a result, credit unions and other financial institutions would have to retain counsel to determine what constitutes an unlawful transaction for each state/locality in which they do business. In addition, that information would have to be incorporated into business account agreements, computer systems, and policies and procedures. We strongly believe that the legal, management, and operational costs associated with such an endeavor—and the questionable effectiveness in fulfilling the requirements of the Act—make the proposal extremely burdensome to a majority of payment system participants.

Indeed, the Agencies acknowledge in the proposal that such an effort would be burdensome and ineffective. In Section II E.6 of the proposal (page 24-25), in the course of discussing the Agencies’ consideration of the creation of a list of unlawful Internet gambling businesses for participants’ use, similar to the Office of Foreign Assets Control (OFAC) list, the Agencies state:

*Any government agency compiling and providing public access to such a list would need to ensure that the particular business was, in fact, engaged in activities deemed to be unlawful Internet gambling under the Act. This would require significant investigation and legal analysis. Such analysis could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiated, and the location where the bet or wager was received. In addition, a business that engages in unlawful Internet gambling might also engage in lawful activities that are not prohibited by the Act. The government would need to provide an appropriate and reasonable process to avoid inflicting unjustified harm to lawful businesses by incorrectly including them on the list without adequate review. The high standards needed to establish and maintain such a list likely would make compiling such a list time-consuming and perhaps under-inclusive. To the extent that Internet gambling businesses can change the names they use to receive payments with relative ease and speed, such a list may be outdated quickly.*

The Leagues find the stark incongruity of holding payment system participants responsible for a determination that a government agency believes would be

complicated, time-consuming, and ultimately ineffective to be a source of significant concern. We are also troubled that the proposal does not include an analysis of the full potential costs to participants as required by Executive Order 12866. Section III of the proposal only addresses the potential recordkeeping costs for policies and procedures, and not the substantial legal, management, and operational costs to participants to identify and track Internet gambling businesses and unlawful Internet gambling. We believe this lack of reliable data in which to assess the impact of the proposal will be burdensome and harmful to all participants, and will result in unsuccessful rulemaking.

***Our Recommendations***

We respectfully recommend the Agencies extend the proposal's comment period an additional 90 days. This would allow the Agencies and other stakeholders to gather more complete operational and cost information, further evaluate the impact of the proposed rules on all participants (particularly credit unions and other financial institutions), and explore other options which may fulfill the goal of the Act. We also believe that the creation of a list of unlawful Internet gambling businesses—similar to the OFAC list—should remain under consideration, and should receive further study.

In conclusion, the Leagues would like to thank the Agencies for the opportunity to comment on this important proposal. We support efforts to implement the provisions of the Act, and look forward to working with the Agencies to further study this issue in order to provide reasonable, fair, and effective regulations. Please contact me if I can provide additional information or insights.

Regards,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long, sweeping underline.

Bill Cheney  
President/CEO  
California and Nevada Credit Union Leagues